

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INNOVATIVE SOLUTIONS
INTERNATIONAL, INC.,

Plaintiff,

v.

HOULIHAN TRADING CO., INC., *et al.*,

Defendants.

CASE NO. C22-0296-JCC

ORDER

This matter comes before the Court on Plaintiff's and Defendant Houlihan Trading Co., Inc.'s ("Houlihan") motions to dismiss Defendant Pilgrim's Pride Corporation's ("Pilgrim's") counterclaims (Dkt. Nos. 111, 112). Having thoroughly considered the briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS Plaintiff's motion (Dkt. No. 111) and DENIES Houlihan's motion (Dkt. No. 112) for the reasons explained herein.

I. BACKGROUND¹

Pilgrim's is in the business of preparing and packaging chicken for resale. (Dkt. No. 90 at 16.) In this instance, that chicken then made its way through multiple vendors, before being sold to Houlihan who, in turn, sold it to Plaintiff. (*Id.* at 16–17.) Plaintiff used that chicken in various

¹ The Court accepts as true Pilgrim's alleged facts for purposes of the instant motions. *See Taylor v. Yee*, 780 F.3d 928, 935 (9th Cir. 2015).

1 food products, which it sold to Trader Joe's. (*Id.* at 18.) After customers complained about the
 2 presence of bones in the products, Trader Joe's terminated its contract with Plaintiff. (*Id.*)
 3 Plaintiff brought suit against various members of the supply chain, including Houlihan and
 4 Pilgrim's. (*Id.* at 19.) Houlihan crossclaimed against Pilgrim's. (Dkt. No. 26.) Pilgrim's then
 5 filed a counterclaim for equitable indemnity² against both Plaintiff and Houlihan. (Dkt. No. 90.)
 6 Plaintiff and Houlihan now move to dismiss Pilgrim's counterclaims. (Dkt. Nos. 111, 112.)

7 **II. DISCUSSION**

8 **A. Legal Standard**

9 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) may be based on
 10 either a lack of a cognizable legal theory or the absence of sufficient facts alleged under such a
 11 theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). When considering
 12 such a motion, the court must accept all facts alleged as true and make all inferences in the light
 13 most favorable to the non-moving party. *In re Fitness Holdings Int'l, Inc.*, 714 F.3d 1141, 1144–
 14 45 (9th Cir. 2013).

15 **B. Equitable Indemnity**

16 Under the “American Rule,” litigants must each pay their own attorney fees, unless a
 17 statute or contract provides otherwise. *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242,
 18 252–53 (2010). And in Washington, a party may recover attorney fees as consequential damages
 19 under a theory of equitable indemnity. *Jakobsen v. Burros*, 2020 WL 1528473, slip op. at 2
 20 (W.D. Wash. 2020) (citing *Blueberry Place Homeowners Ass'n v. Northward Homes, Inc.*, 110
 21 P.3d 1145, 1149–50 (Wash. 2005). To recover under this theory, three elements must be present:
 22 “(1) a wrongful act or omission by A toward B; (2) such act or omission exposes or involves B in
 23

24 ² Pilgrim's also makes passing reference to a claim for implied indemnity. (*See* Dkt. Nos. 90 at
 25 20, 111 at 4 n.3.) But a cause of action for implied indemnity “arises when one party incurs a
 26 liability the other party should discharge by virtue of the nature of the relationship between the
 parties.” *Central Washington Refrigeration, Inc. v. Barbee*, 946 P.2d 760, 763 (Wash. 1997).
 Pilgrim's provides no facts supporting such a relationship between the parties.

1 litigation with C; and (3) C was not connected with the initial transaction or event, [namely], the
2 wrongful act or omission of A toward B.” *Manning v. Loidhamer*, 538 P.2d 136, 138 (Wash. Ct.
3 App. 1975). Pilgrim’s, in seeking equitable indemnity against Plaintiff and Houlihan, asserts that
4 it can establish all of these elements against each, because its chicken was properly labeled for
5 export outside of the United States only meaning one of the defendants misrepresented the nature
6 of the product and/or failed to properly inspect the product to ensure it was free of bones. (Dkt.
7 No. 90 at 16–18.)

8 **C. Plaintiff’s Motion to Dismiss**

9 Plaintiff moves to dismiss Pilgrim’s counterclaim for equitable indemnity, arguing that
10 the claim is not properly brought against it and that Pilgrim’s fails to meet the required elements
11 of a claim for equitable indemnity. (Dkt. No. 111.)

12 As to the first issue, Plaintiff contends that Pilgrim’s claim is improper because any
13 liability between a plaintiff and a defendant can be calculated in a judgment arising from the
14 case. (Dkt. No. 111 at 4) (citing *City of Spokane v. Monsanto Co.*, 2017 WL 2945729, slip op. at
15 8 (E.D. Wash. 2017)). But Pilgrim’s is not seeking equitable indemnity based on proportional
16 liability, as the defendant in *Monsanto* was. (See Dkt. No. 90 at 19–20.) Rather, it alleges that it
17 was an innocent third-party who would not have been exposed to litigation but for Plaintiff’s
18 actions. This is sufficient to bring a claim for equitable indemnity.

19 As to the second issue, Plaintiff is correct that Pilgrim’s has failed to plausibly allege all
20 the required elements to bring such a claim. To do so, Pilgrim’s must demonstrate that Plaintiff
21 made a “wrongful act or omission” towards Pilgrim’s. *Manning*, 538 P.2d at 138. Yet Pilgrim’s
22 only alleges that it would not have been exposed to litigation if Plaintiff had “properly and
23 competently inspected the [chicken product]” or if it had “implemented and followed an
24 adequate inspection protocol.” (Dkt. No. 90 at 19–20.) Neither constitute a wrongful act or
25 omission by Plaintiff *against Pilgrim’s*. See *Newport Yacht Basin Ass’n of Condo. Owners v.*
26 *Supreme Northwest, Inc.*, 285 P.3d 70, 82 (Wash. Ct. App. 2012). For this reason, Pilgrim’s

1 counterclaims against Plaintiff must fail and, as such, are DISMISSED with prejudice.³

2 **D. Houlihan’s Motion to Dismiss**

3 Houlihan also moves to dismiss Pilgrim’s counterclaim for equitable indemnity, arguing
 4 Pilgrim’s has not plausibly alleged all of the elements. (Dkt. No. 112.) Specifically, Houlihan
 5 contends that an equitable indemnity claim must fail if “in addition to the wrongful act or
 6 omission of [Houlihan], there are other reasons why [Pilgrim’s] became involved in litigation
 7 with [Plaintiff].” (Dkt. No. 112 at 5) (citing *Blueberry Place Homeowners Ass’n v. Northward*
 8 *Homes, Inc.*, 110 P.3d 1145, 1150 (Wash. Ct. App. 2005)); *cf. James v. Paton*, 2016 WL
 9 11783311 (W. D. Wash. 2016) (equitable indemnity against accounting firm not available where
 10 third party brought claims against defendants entirely unrelated to accounting firm). And
 11 Houlihan asserts that Pilgrim’s is a defendant in this case based on its own conduct, which
 12 cannot be reasonably attributed to any other party. (Dkt. No. 112 at 5.) Houlihan also cites to the
 13 fact that Plaintiff’s allegations against Pilgrim’s have survived a motion to dismiss. (*Id.* at 6.)

14 But the fact that Plaintiff has raised plausible claims against Pilgrim’s is irrelevant here.
 15 At the motion to dismiss stage, the Court must consider all facts in the light most favorable to the
 16 non-moving party. *See In re Fitness Holdings*, 714 F.3d at 1144–45. It is Pilgrim’s, the non-
 17 moving party, allegations which are at issue. And it has stated sufficient facts to support its claim
 18 that it has been exposed to litigation because of Houlihan’s wrongful act, namely
 19 misrepresenting Pilgrim’s product to Plaintiff. (Dkt. No. 122 at 5.) Although Pilgrim’s claims
 20 may be so intertwined with Plaintiff’s that, ultimately, Pilgrim’s counterclaim fails, this is not the
 21 proper stage of proceedings to answer such a question. *See Jakobsen v. Burros*, 2020 WL
 22 1528473, slip op. at 4 (W.D. Wash. 2020).

23 **III. CONCLUSION**

24 For the foregoing reasons, Plaintiff’s motion to dismiss (Dkt. No. 111) is GRANTED and

25 _____
 26 ³ A dismissal with prejudice is appropriate because further amendment would be futile. *See*
Cervantes v. Countrywide Home Loans, Inc., 656 F.3d 1034, 1041 (9th Cir. 2011).

Houlihan's motion to dismiss (Dkt. No. 112) is DENIED.

DATED this 23rd day of March 2023.

A handwritten signature in black ink, reading "John C. Coughenour", written over a horizontal line.

John C. Coughenour
UNITED STATES DISTRICT JUDGE